

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: November 2-3, 2005

Reference No.: 2.4a.(3)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla G. Rhinehart
Division Chief
Right of Way and
Land Surveys

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19170, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19170 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19170 - Telstar Utilities Construction Co., Inc.

06-Fre-180-PM 54.06 - Parcel 85338-1, 2; 85519-1 - EA: 342339-3000C - Certification Date: 03/01/06 - RTL Date: 07/01/06 - (Freeway - new alignment). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, a permanent easement for county of Fresno, together with all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements. Located in the unincorporated area of Fresno at 139 North Valentine. APN 326-190-13.

Attachments

SUMMARY OF ISSUES

Mr. Hugh S. Turner is the owner of Telstar Utilities Construction Company, Inc., located at 139 North Valentine Avenue, near the city of Fresno, in Fresno County. The larger parcel (Parcel 85519 and 85338) is approximately 5.98 acres, of which 1.89 acres is required for the State Route (SR) 180 project. Mr. Bacigalupi, legal counsel for Mr. Turner, attended the Second Level Hearing held on September 27, 2005, in Fresno at the Department's District office. Mr. Turner does not object to the Department's project or the design of the project. The following is a description of the concerns, which Mr. Bacigalupi expressed and the Department's response.

Owner:

The Department's partial acquisition of the property leaves the owner with an uneconomic remnant. Government Code Section 7267.7 mandates the Department to acquire the remainder.

Department:

A survey was made of existing self-storage operations in the Fresno area that vary from two to four acres in size operating in Fresno County. The Department has assessed that the remainder parcel of 4.09 acres is of sufficient size to be viable as a storage facility either to the current owner or on the open market. The Department does not agree with the owner's assessment that the remainder is uneconomic.

Owner:

The failure to make a proper Government Code 7267.2 offer.

Department:

A first written offer for the full amount of the Department's approved appraisal was personally made on December 3, 2004, in full compliance with government Code 7267.2.

Owner:

The Department's offer is deficient and defective because it does not include compensation for severance damages and the loss of goodwill.

Department Response:

The Department's offer includes compensation for damages for the taking of the existing improvements on the portion of the property to be acquired, including cost to cure damages. The mini storage business will be slightly impacted due to the absence of an on-site office. Compensation received for existing improvements are available to the property owner to be used towards a replacement on-site office.

Additionally, Government Code Section 7267.2 refers to the fair market appraisal of real property only. Business goodwill is not real property and is not a required element of the code. The Department will consider a Business Loss of Goodwill claim when the owner provides necessary documentation so an evaluation can be completed.

Attachments

Resolution of Necessity Appearance Fact Sheet

<u>PROJECT DATA:</u>	06-Fre-180-PM R53.4/R55.8 (KP R86.0/R89.8)
<u>Location:</u>	State Route 180 in and near the city of Fresno, in Fresno County
<u>Limits:</u>	From 0.3 km west of Brawley Avenue to 0.2 km east of West Avenue
<u>Cost:</u>	Right of Way cost estimate \$8,900,000 Construction cost estimate \$36,550,000
<u>Funding Source:</u>	Locally Funded State Highway Projects 400.000 (Tax Measure)
<u>Number of Lanes:</u>	Existing: 2 lanes conventional highway (Whitesbridge Road) Proposed: 4 to 6 lanes on new freeway alignment
<u>Proposed Major Features</u>	Interchanges: Marks Avenue Grade Separation: Hughes-West Diagonal. Other: A frontage road, north of the freeway, between Marks Avenue and Hughes-West Diagonal
<u>Traffic:</u>	Construction Year (2008) Average Daily Traffic (ADT) (year 2008): 20,400 Proposed ADT (year 2028): 69,000
<u>PARCEL DATA:</u>	
<u>Property Owner:</u>	Telstar Utilities Construction Company, Inc.
<u>Parcel Location:</u>	Assessor's Parcel Number (APN) 326-190-13 is located on the northwest quadrant of West Uneeda Avenue and Valentine Avenue, approximately 700 feet north of Whitesbridge Road. The address is 139 North Valentine Avenue, Fresno.
<u>Present Use:</u>	Business – Telstar Utilities Construction Company, Inc. A and Z Storage
<u>Area of Property:</u>	5.98 Acres (24,217.1 square meters)
<u>Area Required:</u>	Parcel 85338-1 = 1.68 Acres (6,790.8 square meters) in fee Parcel 85338-2 = 0.16 Acres (651.8 square meters) road easement Parcel 85519-1 = 0.05 Acres (197.8 square meters) road easement Total Area = 1.89 Acres (7,640.4 square meters)

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met September 27, 2005 in Fresno. The Panel members consisted of Donald Grebe, Department Headquarters (HQ's) Right of Way; Richard B. Williams, Department HQ's Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. Mr. Bacigalupi, legal counsel for Hugh S. Turner, the owner of the property, was present at the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

The existing State Route (SR) 180 is an east-west two-way conventional highway with straight tangent alignment, level grade and good sight distance. The roadway has two 3.6-meter wide lanes and 0.0 to 0.6-meter wide shoulders constructed of asphalt concrete (AC). The route provides the primary passage between the cities of Kerman and Fresno with a high volume of local traffic generated by commuters between the two cities.

The proposed project will:

1. **Relieve traffic congestion:** Level of Service (LOS) on the existing SR 180 between Brawley Avenue and Hughes-West Diagonal is expected to be F in 2010. The proposed project would provide an LOS D or better in 2028, for 20-year design period, conforming to the target LOS D or better.
2. **Improve safety:** Freeways in general provide safer driving than conventional highways. Freeways would avoid or minimize potential head-on collisions and provide safe passing opportunities. This proposed SR 180 West Freeway project would also improve traffic safety on local streets in the vicinity.
3. **Provide route continuity:** This project completes the planned SR 180 West Freeway between Brawley Avenue and SR 99. Segment 1 of the SR 180 West Freeway, from SR 99 to Hughes-West Diagonal, was completed in May 2004. This project, also known as SR 180 West Segment 2, will complete the freeway alignment from Brawley Avenue to Hughes-West Diagonal.
4. **Consistent with local planning and development:** The Council of Fresno County Governments (COFCG) is the designated Metropolitan Planning Organization for Fresno County and is the responsible agency for developing and maintaining a travel demand model, which meets the current requirements of the Clean Air Act. The Department used the COFCG's 2025 travel demand model as a basis to develop the traffic forecast volumes for this project. The traffic projection model used accounts for the current regional growth

patterns, and local growth trends that have led to increased traffic demand. The land use within the area of the project was provided by COFCG and is consistent with the current City and County land use plans.

The project is funded by local sales tax, Measure "C", which is administered by the Fresno County Transportation Authority (FCTA). This project has been identified in their Expenditure Plan as early as 1991. Since that time, there has been widespread support from the general public, the city of Fresno, the county of Fresno, and rural communities to the west. There has not been any documented opposition to the project.

PROJECT PLANNING AND LOCATION

The project is located in the incorporated area of the city of Fresno, outside the city but within the county limits in Fresno County. The proposed facility begins as a four-lane freeway from Brawley Avenue to Marks Avenue. It becomes a six-lane freeway between Marks Avenue and 0.2 kilometers east of West Avenue, where the facility connects with the existing six-lane freeway segment, Segment 1, completed May 2004. There will be a partial cloverleaf interchange at Marks Avenue and a grade separation at Hughes-West Diagonal.

The project is to be locally funded (Fresno County Sales Tax Initiative - Measure C). The 2004 construction cost estimates is \$37 million and the right of way cost estimate is \$9 million. The project is scheduled for advertisement in May 2006.

On August 11, 1994, a Project Report was approved for a two-lane expressway between Brawley Avenue and Hughes-West Diagonal and a four-lane freeway from Hughes-West Diagonal to SR 99.

Segment 2 of the project from Brawley Avenue to Hughes-West Diagonal, previously planned to be an expressway facility, is no longer able to meet the projected 20-year traffic demand due to changes in the general plan and local zoning, regional growth patterns and local growth trends. A freeway facility alternative was investigated in the 1996 Environmental Assessment, but traffic demand did not warrant selection of the freeway alternative. An Environmental Re-evaluation approved on November 8, 2004, and CEQA Addendum approved on October 25, 2004, addressed design changes related to constructing the freeway facility instead of the expressway facility, incorporating construction of the interchange at Marks Avenue and conversion of the interchange at the Hughes-West Diagonal to a Grade Separation, along with cul-de-sacs at Whitesbride Road, Valentine Avenue and Hughes Avenue.

Reasons that form the basis of the necessity to acquire this property are:

- Alignment is consistent with the existing Route Adoption.
- Alignment is consistent with city of Fresno and county of Fresno general plans.
- Existing Route 180 freeway is already constructed on this alignment approx. 0.5 miles east of this location.

- City of Fresno requires a frontage road between Marks Avenue & the Hughes-West Diagonal. The frontage road would not be able to be constructed if the alignment were to be shifted north to avoid this parcel.
- Shifting the alignment south would result in greater environmental impacts, greater construction and right of way costs.
- This project is the second phase of a two-phase project. The first phase has been constructed and temporarily terminates at the Hughes-West Diagonal. Without timely construction of the second phase, the termini is expected to experience traffic Level of Service (LOS) F by 2010.
- The funding for this project is from a local sales tax measure. Any delay to the schedule may jeopardize the project since the measure ends in 2009.

NEED FOR SUBJECT PROPERTY

A portion of the subject parcel (1.89 Acres) is within the proposed new alignment of SR 180 West Freeway. The freeway extension will sever Valentine Avenue, requiring a 0.21 acre permanent road easement acquisition for the construction of a turnaround area.

The project cannot be deferred or delayed because of its importance to the operations of Route 180 and the local agencies.

The following is a description of the concerns, which Ms. Lewis's legal counsel has expressed and the Department's response.

Owner:

The Department's partial acquisition of the property leaves the owner with an uneconomic remnant. Government Code Section 7267.7 mandates the Department to acquire the remainder.

Department:

A survey was made of existing self-storage operations in the Fresno area that vary from two to four acres in size operating in Fresno County. The Department has assessed that the remainder parcel of 4.09 acres is of sufficient size to be viable as a storage facility either to the current owner or on the open market. The Department does not agree with the owner's assessment that the remainder is uneconomic.

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PARCEL DESCRIPTION

The subject parcels, Parcel Numbers 85519 and 85338, are identified as Assessor's parcel number (APN) 326-190-12, and are located near the city of Fresno, in Fresno County. The approximate area of the property is 5.98 acres. The property is fairly flat, rectangular in shape, approximately three to five feet higher than the surrounding properties, and zoned Light Manufacturing/Limited Agricultural District (M-1/AI-20). It is located on the northwest quadrant of West Uneeda and North Rafael Avenues, approximately 700 feet north of Whitesbridge Road, with access to Uneeda Avenue and Valentine Avenue.

The rights being acquired from the larger parcel for the proposed project is 1.68 acres in fee and two road easements; 0.05 acres on parcel 85338 and 0.05 acres on parcel 85519. The parcel improvements within the right of way are two office/ single-family residences, built in 1915 and 1920; a metal garage/shop built in 1935; and a pole building attached to the shop. A former residence houses the office support staff for all five of Mr. Turner's businesses; including Telstar Utility Construction Company, A and Z Storage, and three off site businesses.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record.

PANEL RECOMMENDATION

The Panel concludes that the District's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

DONALD GREBE
Office Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON SEPTEMBER 27, 2005**

Donald Grebe, Headquarters Right of Way, Panel Chair
Richard B. Williams, Headquarters Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

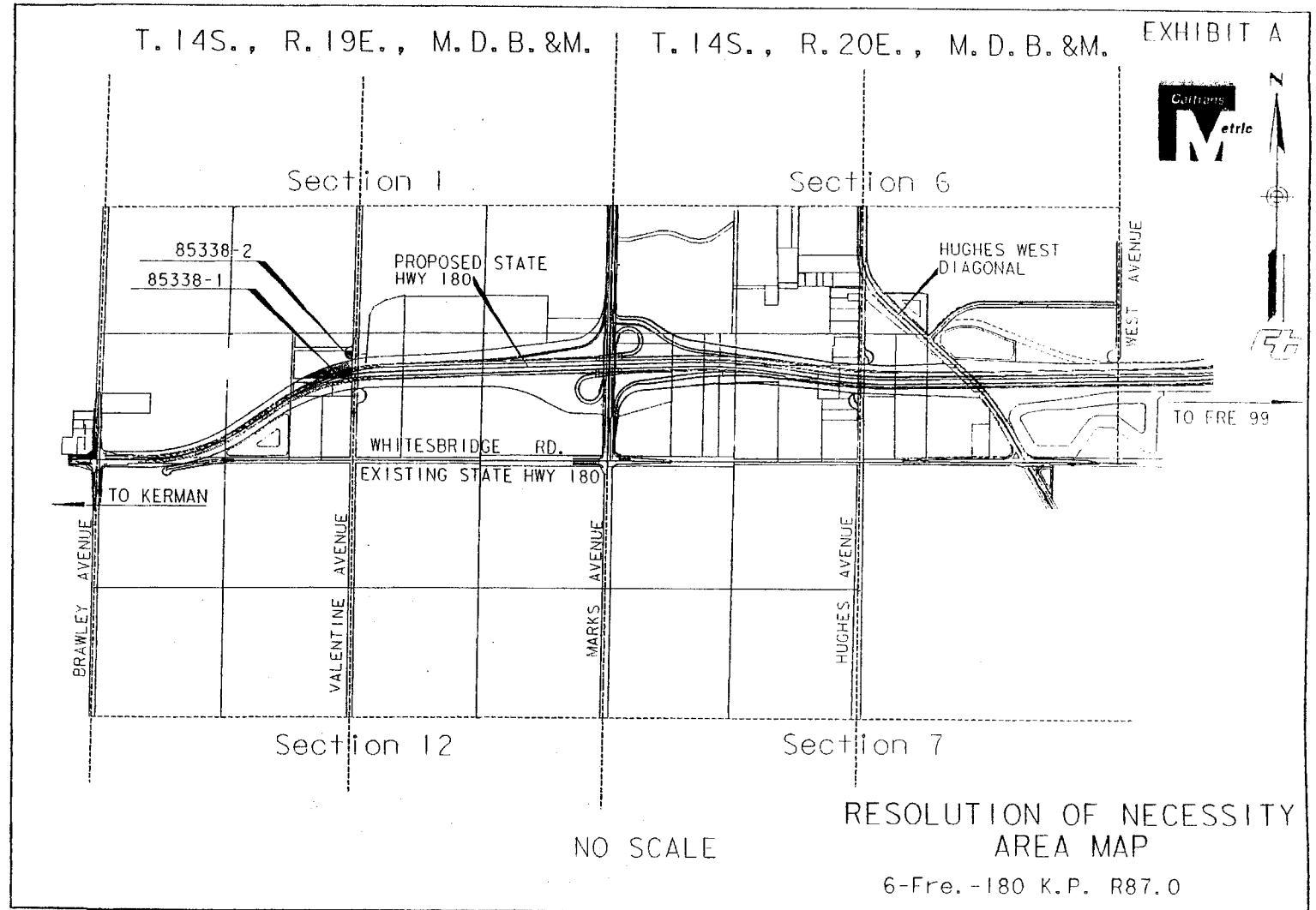
Dale E. Bacigalupi, Legal Counsel for Hugh S. Turner

Mike Leonardo, Central Region District Director
Kim Anderson, District 6, Chief Project Development
Spiros Karimbakas, Acting Chief, Central Region Right of Way
Jamie Lupo, Central Region, Supervisor Right of Way
Rory Quince, Central Region, Design
Michael Janzen, Central Region, Design

T. 14S., R. 19E., M.D.B. & M.

T. 14S., R. 20E., M.D.B. & M.

EXHIBIT A



T. 14S., R. 19E., M. D. B. & M.

Section 1

EXHIBIT B



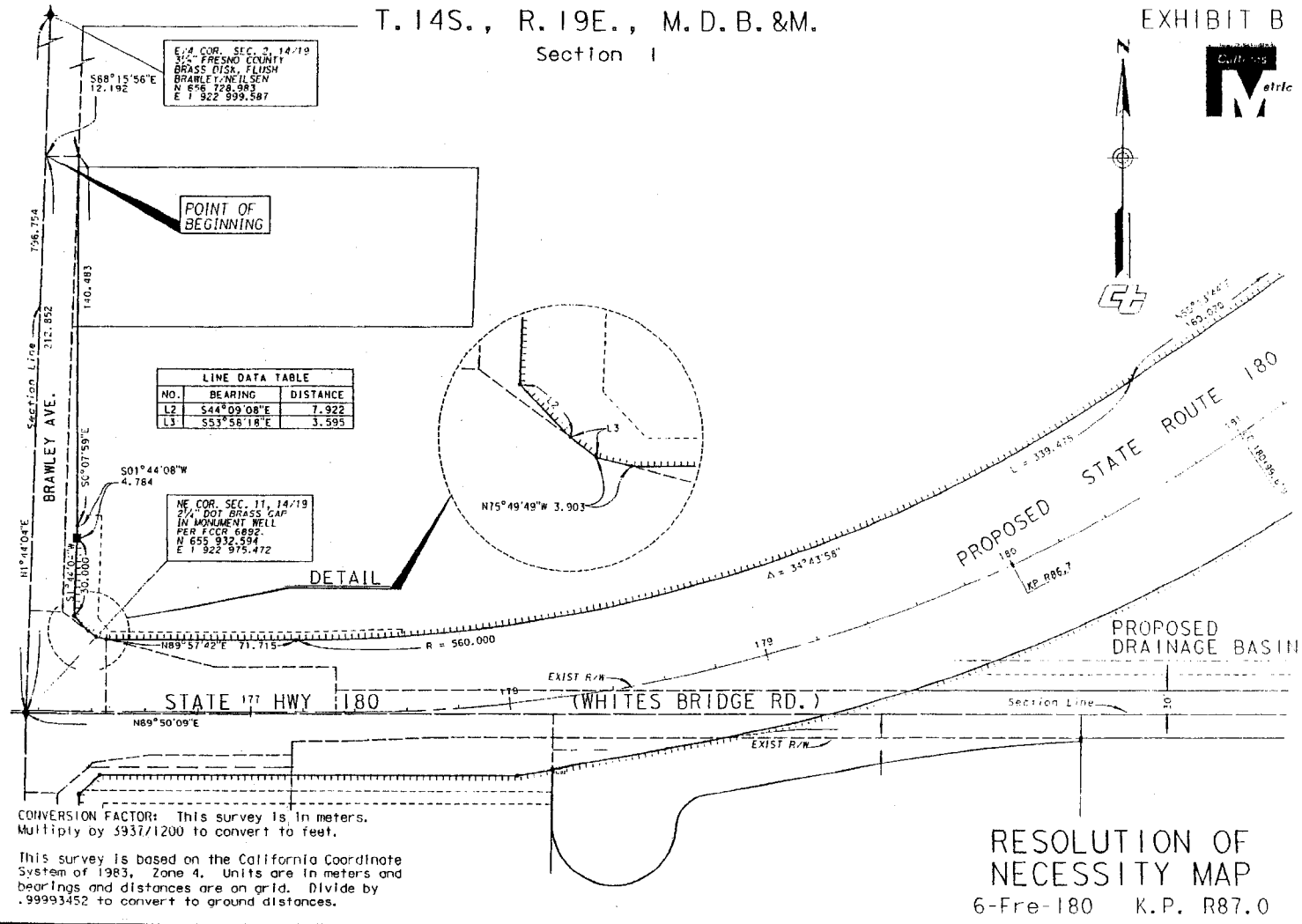
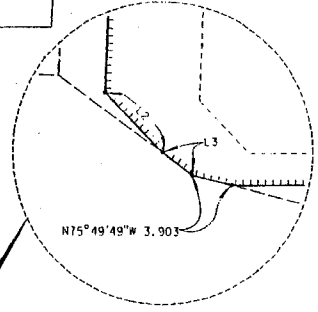
E 1/4 COR. SEC. 3, 14/19
3/4" DOT BRASS DISK, FLUSH
BRAWLEY-NEILSEN
N 64° 72' 9.83"
E 1° 32' 999.587

POINT OF BEGINNING

LINE DATA TABLE		
NO.	BEARING	DISTANCE
L2	S 44° 09' 08" E	7.922
L3	S 53° 58' 18" E	3.595

NE COR. SEC. 11, 14/19
3/4" DOT BRASS CAP
IN MONUMENT WELL
PER F.C.C.R. 6892
N 65° 32' 594"
E 1° 32' 975.472

DETAIL



CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 4. Units are in meters and
bearings and distances are on grid. Divide by
.99993452 to convert to ground distances.

RESOLUTION OF
NECESSITY MAP
6-Fre-180 K.P. R87.0

T. 14S., R. 19E., M.D.B. & M.

Section 1

EXHIBIT C

